

1966/142



**THE ROCK OYSTER FARMING REGULATIONS 1964,
AMENDMENT NO. 1**

—
BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 17th day of August 1966

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Rock Oyster Farming Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Rock Oyster Farming Regulations 1964, Amendment No. 1, and shall be read together with and deemed part of the Rock Oyster Farming Regulations 1964* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

PART I—LICENCES TO PICK ROCK OYSTERS

2. Interpretation—In this Part of these regulations and in any licence, unless the context otherwise requires,—

“Employee” in relation to a lessee means an agent, independent contractor, or servant of a lessee:

“Employee’s licence” means a licence issued in respect of an employee of a lessee:

“Lessee’s licence” means a licence issued to a lessee:

“Licence” means a lessee’s licence or an employee’s licence granted under this Part of these regulations authorising the licensee to pick rock oysters:

“Lot” means a quantity of rock oysters measured in the shell and not exceeding 4 gallons:

“Secretary” means the Secretary for Marine appointed under the Shipping and Seamen Act 1952; and includes any officer of the Marine Department authorised by the Secretary to do anything on his behalf:

“Supervising fishery officer” means a fishery officer whom the Secretary has designated in a licence to supervise the picking of oysters, or their removal from the vicinity of a rock oyster bed.

3. Application of this Part—The provisions of this Part of these regulations shall apply to every licence, except in so far as they are expressly negated or modified by or are inconsistent with the express conditions of a licence.

4. Licences not to derogate from other Acts or regulations—Nothing in any licence shall derogate from the provisions of the Act, the Fisheries Act 1908, or any regulations thereunder (except in so far as authorised thereby), and in any case where an ambiguity or inconsistency arises the provisions of the enactment or regulation, as the case may be, shall prevail over the provisions of the licence.

5. Limitations on taking or receiving rock oysters—Subject to any other enactment or regulation to the contrary, every person, whether or not he is a lessee or lessee’s employee, commits an offence against these regulations if, otherwise than pursuant to a licence for the time being in force, he—

(a) Picks any rock oyster; or

(b) Receives into his possession any rock oyster which he knows has been unlawfully picked or removed as aforesaid.

*S.R. 1964/207

6. Applications for licences—(1) Any lessee may apply for a licence permitting the picking of rock oysters from any area, and the application may be for either—

- (a) A lessee's licence for the lessee's own use; or
- (b) An employee's licence for the use of any specified employee of the lessee:

Provided that a lessee may not apply for an employee's licence if the employee in respect of whom the application is made is a person—

- (a) Under 16 years of age; or
- (b) Whose fishing permit issued under Part I of the Fisheries Amendment Act 1963 has been forfeited pursuant to section 62 of the Fisheries Act 1908.

(2) Every application for a licence shall be made to the Secretary in the form from time to time prescribed by him, and shall be accompanied by the fee prescribed by regulation 8 of these regulations.

(3) The Secretary may require an applicant to give such additional relevant information as may be necessary to determine the application, and, until that information has been supplied, the Secretary shall be under no obligation to proceed with the determination.

7. False representation—(1) Every person commits an offence against this Part of these regulations who, by means of any false pretence, induces or attempts to induce the Secretary to issue a licence to him or to an employee.

(2) For the purposes of this regulation, the term "false pretence" shall have the same meaning as defined in section 245 of the Crimes Act 1961.

8. Fees—The fee payable on application for a licence shall be in accordance with the following scale:

(a) A lessee's licence—	£	s.	d.
For each lot authorised to be taken under the licence	0	1	0
(b) An employee's licence—			
For each licence	1	0	0
(c) For any duplicate licence issued in lieu of a licence lost, destroyed, or defaced	0	10	0

9. Form of licence—Every licence shall be in such form as the Secretary may prescribe, but shall nevertheless contain the following:

- (a) In the case of a lessee's licence—
 - (i) The name and address of the lessee and the legal description of his leased area;
 - (ii) The name and address of each employee of the lessee who has been granted a licence to pick rock oysters for or on behalf of the lessee;
 - (iii) The number of lots authorised to be picked under the licence;
 - (iv) The area or areas from which the rock oysters may be picked and the number of lots which may be taken from each area;
 - (v) The period for which the licence is issued;

(b) In the case of an employee's licence—

- (i) The name and address of the holder of the licence:
- (ii) The name and address of the lessee and the legal description of the leased area or areas of the lessee:
- (iii) The number of lots authorised to be picked under the licence:
- (iv) The areas from which rock oysters may be picked and the number of lots which may be taken from each area:
- (v) The period for which the licence is issued.

(2) Every licence shall have endorsed thereon such terms and conditions additional to those expressed or implied in these regulations as the Secretary may determine as applicable in any particular case.

10. Grant of licences—(1) The Secretary may grant, or refuse to grant a licence, or grant a licence on such conditions as may be authorised by these regulations, and, on granting a licence, shall designate the area or areas from which rock oysters may be picked.

(2) No employee's licence may be granted in respect of any person unless the lessee by whom he is employed is the holder of a lessee's licence.

(3) No licence authorising the picking of less than 100 lots during the period for which it is issued may be granted.

(4) Any person whose application for a licence has been declined may appeal to the Minister, who shall forthwith determine the appeal after consideration of the issues. The appellant shall submit his case in writing to the Minister. The decision of the Minister shall be final.

11. Conditions of licences—(1) It shall be lawful for licences to be issued containing conditions in respect of the following matters:

- (a) The places or waters designated in the licence from which rock oysters may be picked:
- (b) The size or quality of rock oysters which may be picked:
- (c) The methods of picking:
- (d) The disposal of debris:

Provided that if the Secretary notifies the lessee in writing of any conditions relating to the foregoing matters which have been subsequently imposed, those conditions shall be deemed to be incorporated in the licence as from the date of notification, or the date when the notification would be received in the ordinary course of post, as the case may be.

(2) It shall be an implied condition of every licence issued under these regulations that the lessee will put out in his leased land in an approved manner four approved battens (or other approved material for the catching of rock oyster spat) in respect of each lot of oysters picked.

(3) The battens (or other approved material) shall be put out within such period as the Secretary may specify in the licence, or notify the lessee in writing.

(4) It shall be the duty of the lessee to maintain the structures and the spat catching material and to cultivate the rock oysters growing thereon to the best of his knowledge and ability until the spat collected or a substantial proportion thereof, has matured to such a size that it has ceased to be an unmarketable oyster as defined in regulation 56 of the principal regulations.

(5) Every rock oyster taken pursuant to a licence by or on behalf of a lessee shall be put out on trays or other approved material, and the lessee shall not sell or otherwise dispose of any oyster so taken until the expiration of three months from the date on which it was picked:

Provided that the Secretary may authorise, under such conditions as he may determine,—

- (a) The transfer of rock oysters (being rock oysters picked pursuant to a licence) from one leased area to another; or
- (b) The destruction or disposal of oysters so picked if it appears that—
 - (i) They are unlikely to mature to a marketable size; or
 - (ii) They are infected with any disease, affected by marine pests, or affected by any other cause to such an extent as to render them unsuitable for cultivation or unfit for human consumption.

(6) The provisions of this regulation shall not in any way be limited by anything in regulation 30 of the principal regulations.

12. Validity of licences—(1) No lessee's permit shall become valid until the lessee to whom it has been issued has signed his name, written in his usual handwriting in the place provided for that purpose.

(2) No employee's licence shall become valid until the lessee on whose behalf the permit was issued and the employee named therein have signed their names, written in their usual handwriting in the places provided for that purpose.

(3) Any licence issued under these regulations shall cease to be valid in any case where the lessee in respect of whom it has been issued is in arrears with payment of rent or royalties due under his lease.

(4) The signature of a lessee on any lessee's or employee's licence shall be deemed to be acceptance of the conditions of the licence, including those imposed by these regulations.

(5) A licence holder shall not pick rock oysters between the hours of sunset and sunrise.

(6) A licence shall remain in force until the expiry date specified therein, and shall expire with that date. If no expiry date is specified, the licence shall remain in force until the expiration of three months from the date of issue.

(7) It shall be the responsibility of a lessee, on whose application a licence has been issued, to surrender forthwith that licence to the Secretary, or to the supervising fishery officer named therein, as soon as it has expired or has been lawfully cancelled, whichever first occurs.

13. Offence to use expired or cancelled licences—Every lessee or lessee's employee commits an offence against these regulations if, with intent to deceive, he uses or attempts to use as valid any licence which has expired, or has been cancelled, or is otherwise invalid.

14. Obligations of lessees to notify the Secretary, etc., of employee ceasing to be employed by him—(1) The lessee shall forthwith obtain any licence held by an employee who has ceased to be employed by him, and shall return it to the Secretary or the supervising fishery officer.

(2) If for any reason the lessee fails to obtain a licence from an employee formerly employed by him, he shall immediately notify the Secretary or the supervising fishery officer of the fact and also that the employee named in the licence has ceased to be employed by him.

(3) An employee's licence shall be deemed to be cancelled as soon as the employee named therein ceases to be employed by the lessee.

15. Licence not to confer right of entry—A licence shall not be deemed to confer a right of entry on any land without the consent of the lawful occupier thereof.

16. Defacing of licences—Every person who, with intent to deceive, alters or obliterates any particulars endorsed on any licence, or who defaces a licence, commits an offence against these regulations.

17. Licences not transferable—(1) No licence shall be transferable or be deemed to authorise any person who is not the lawful holder thereof to pick rock oysters or receive them into his possession.

(2) Every person commits an offence against these regulations if,—

(a) He uses or attempts to use a licence of which he is not the lawful holder; or

(b) Being a licence holder,—

(i) He transfers any licence to any other person; or

(ii) He permits any other person to pick oysters pursuant to his licence; or

(iii) He facilitates or connives at the unlawful picking of oysters by giving his licence to another person.

18. Licence to be produced—(1) Every person who is picking rock oysters in any place, or who is in possession of rock oysters, shall on the demand of any fishery officer or constable give his true name and place of residence and, on like demand, produce and show to any such officer or constable his licence and the contents of his bag, container, or receptacle, including any receptacle which is part of a vehicle, and, if required to do so, shall make or give, legibly and clearly, a specimen signature for comparison with the signature of the holder which is endorsed on the licence as required by regulation 12 hereof.

(2) Every person commits an offence against these regulations if he—

(a) Refuses to produce his licence; or

(b) Fails to produce his licence when lawfully required to do so; or

(c) Produces a licence of which he is not the lawful holder; or

(d) Forges the name of the person who is named in the licence as the holder:

Provided that no person shall be deemed to have committed an offence against paragraph (b) of this subclause if he produces his licence to a fishery officer or other officer of the Marine Department within seven days of the original demand.

(3) If it appears to the fishery officer or constable that the person found picking or in possession of oysters as aforesaid is not the person named in a licence produced by him as the holder, that person commits a further offence against these regulations if, after being required to do so by the officer or constable, he—

- (a) Refuses to disclose his true name or place of residence; or
- (b) Gives a false name or address; or
- (c) Gives a description of his place of residence that is illusory for the purpose of discovery.

19. Modification of licences—(1) The Secretary may at any time, for the purpose of preserving a bed or ensuring that a bed is not unduly depleted, amend, modify, extend, or cancel any of the conditions specified in a licence (not being any conditions expressed or implied by these regulations).

(2) No compensation shall be payable to a lessee by reason of the exercise of the powers of the Secretary under this regulation, provided the powers are exercised reasonably, having regard to all the circumstances of the case.

(3) The Secretary shall notify the lessee in writing of the amendment to, or modification, extension, or cancellation of, any conditions of a licence and that amendment, modification, extension, or cancellation as the case may be shall be deemed to be incorporated in the licence as from the date of notification, or the date when the notification would be received in the ordinary course of post.

20. Cancellation of licences—(1) A licence shall be deemed to be cancelled if—

- (a) The lease associated with the issue of the licence has been surrendered, or has been forfeited under regulation 42 of the principal regulations; or
- (b) The lessee, or in the case of an employee's licence the employee of the lessee, is, during the currency of the licence, convicted of an offence against the Act, or against any regulations made thereunder (including these regulations), or against Part I of the Fisheries Act 1908 or any regulations made under that Part; or
- (c) The lessee, or in the case of an employee's licence the employee, dies.

(2) In any case where for any reason a lessee's licence is cancelled or ceases to be valid, every licence issued in respect of an employee of that lessee shall be deemed cancelled.

(3) No licence holder whose licence has been cancelled by virtue of paragraph (b) of subclause (1) of this regulation shall be eligible for a further licence until the expiry of one year from the date of conviction:

Provided that in no such case shall a new licence be granted unless the approval of the Minister has been first obtained.

21. Duties of licence holders—(1) Every licence holder shall—

- (a) Ensure that a minimum of injury is occasioned to every area designated in his licence from which he may pick rock oysters:
- (b) Dispose of all shell and debris resulting from picking operations in the manner specified in the licence:
- (c) Leave the rock or other surface to which the rock oysters have adhered clear of shell or debris in order to ensure the availability of a suitable surface for spat to settle in subsequent seasons.

(2) Every person, before commencing to pick rock oysters pursuant to a licence, shall ascertain from the supervising fishery officer the size, class, and quality of rock oysters which may be picked, and it shall then be the responsibility of the officer to indicate—

- (a) Examples of rock oysters that may be picked:
- (b) The boundaries of the area from which rock oysters may be taken.

(3) Every licence holder commits an offence if he knowingly picks or receives any rock oyster into his possession in contravention of sub-clause (2) of this regulation.

22. Rock oysters not to be removed except under supervision—(1) No licence holder, and no person acting under the direction of the lessee, shall remove any rock oysters from the vicinity of the area from which they were picked until he has been authorised to do so by the supervising fishery officer.

(2) Every supervising fishery officer shall, if so requested by the licence holder or person acting under the direction of the lessee produce his warrant of appointment.

(3) The supervising fishery officer shall endorse in the space provided on the licence the number of lots which are being, or are about to be, removed from the designated area.

(4) The Secretary may from time to time appoint a person other than the fishery officer named in the licence to supervise the removal of rock oysters as aforesaid and the provisions of this regulation shall apply as if that person were a supervising fishery officer.

23. Ownership of rock oysters—All rock oysters picked pursuant to a licence shall be deemed to be the property of, and in the possession of, the lessee in respect of whose lease the licence has been granted.

24. Seizure of rock oysters—(1) It shall be lawful for any fishery officer to seize and take possession of any rock oyster which he has reasonable and probable cause to believe has been unlawfully picked and also all receptacles, gear, implements, or other apparatus which are being used or which he has reasonable and probable cause to believe have been used or are intended to be used in contravention of these regulations.

(2) Rock oysters seized pursuant to this regulation shall be disposed of in such manner as the Minister may determine, and the person from whom the rock oysters were seized shall not be entitled to any compensation:

Provided that, if it is proved that the rock oysters were lawfully picked, he shall be entitled to receive the proceeds (if any) from the sale of the rock oysters taken from him.

(3) In the case of all other property so seized, the property shall be retained by the Secretary pending the trial of the person for the offence in respect of which the property was seized, and shall be disposed of as follows:

- (a) On conviction of the person for any such offence the property shall be deemed to be forfeited to Her Majesty the Queen to be disposed of in such manner as the Minister directs:
- (b) If in any such proceedings the charge is dismissed, or if no such proceedings are commenced within six months after the seizure, the property shall be returned to the person last in possession thereof.

25. Offences and penalty—(1) Every person commits an offence who does any act in contravention of or fails to comply with any provision of this Part of these regulations.

(2) Every person who commits an offence against these regulations is liable on summary conviction to a fine not exceeding £250, which shall be in addition and without prejudice to any other liability by way of cancellation of his licence under regulation 20 hereof and forfeiture of any property under regulation 24 hereof.

26. Service of notices—(1) Any notice or other document to be given to or served on any licence holder for the purposes of this Part of these regulations may be given or served by causing the same to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address stated by him in any application or other document under the Act or these regulations, or to be sent by registered letter addressed to him at that place of abode or business or address, or affixed on any structure for the time being erected upon the leased area in respect of which the licence was issued.

(2) Any notice sent by registered letter shall be deemed to be served at the time when it would be delivered at its destination in the ordinary course of registered post.

(3) If at any time a licence holder changes his address to one that is different from that given in the application for his licence, he shall forthwith notify the Secretary in writing of the change.

PART II—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL REGULATIONS

27. Definition of "rock oyster" and "fishery officer"—(1) Regulation 2 of the principal regulations is hereby amended by revoking the definition of the term "rock oyster", and substituting the following definition:

"Rock oyster" includes the kinds of oyster known as *Ostrea purpurea*, *Saxostrea glomerata*, *Crassostrea glomerata*, *Ostrea glomerata*, *Ostrea mordax*, shore oyster, drift oyster, mangrove oyster, or any oyster of a like kind by whatever name it may locally be known or wherever it may occur:".

(2) Regulation 2 of the principal regulations is hereby further amended by inserting, after the definition of the term "disease", the following definition:

"'Fishery officer' means a fishery officer under section 4 of the Fisheries Act 1908 or an honorary fishery officer under subsection (1) of section 9 of the Fisheries Amendment Act 1959."

28. Aerial photographs—(1) Regulation 4 of the principal regulations is hereby amended by omitting from paragraph (c) of subclause (3) the words "supplied by the Department of Lands and Survey".

(2) Form 1 in the Schedule to the principal regulations is hereby amended by omitting from the first alternative paragraph (c) the words "supplied by the Department of Lands and Survey".

29. Oyster stealing by a lessee—Regulation 39 of the principal regulations is hereby amended by omitting the words "under sections 12 to 37 of the Fisheries Act 1908", and substituting the words "against Part I of the Fisheries Amendment Act 1965".

30. Lessee to notify change of address—Regulation 63 of the principal regulations is hereby amended by adding the following subclause:

"(5) If at any time a lessee changes his address to one that is different from that given in the application for his lease, he shall forthwith notify the Secretary in writing of the change."

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

Part I of the regulations provides for the granting of licences to lessees of rock oyster farms and their employees to enable them to pick rock oysters which are growing naturally and to cultivate them on trays and similar material set out in the lessee's farm. Part I also includes provisions relating to applications for licences, conditions on which licences may be issued, fees, validity, modification, and cancellation of licences, the controlling, regulating, and supervising of rock oyster picking, ownership and seizure of rock oysters, and various machinery matters.

Part II makes various minor miscellaneous amendments to the principal regulations. Regulation 28 provides that any aerial photograph of the proposed farm may be attached to the application for a lease; it need no longer be supplied by the Department of Lands and Survey.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 18 August 1966.

These regulations are administered in the Marine Department.